UNITED STATES DISTRICT COURT
For the
Southern District of New York

ACADIA INSURANCE COMPANY (a W.R. Berkley Company as Subrogee of M&L Trucking Services, Inc.), *Plaintiff(s)* v. **VICTOR TRANSPORTATION, INC.,** *Defendant(s)*	)	**COMPLAINT** Civil Action No.:

The Plaintiff, Acadia Insurance Company as Subrogee of M&L Trucking Services, Inc., by its attorneys, Pappas, Cox, Kimpel, Dodd & Levine, P.C., alleges and respectfully shows the Court as follows:

1. At all times mentioned herein, the Plaintiff was and still is an insurance company organized and existing by the laws of the State of New Hampshire, is duly licensed and authorized to transact business in the State of New York and has a principal place of business at One Acadia Commons, 250 County Road in Westbrook, Maine.

2. The Defendant, Victor Transportation, Inc., was and still is a corporation organized and existing by virtue of the laws of the State of Illinois with its principal office located at 6653 Belmont Avenue, in the City of Chicago, Illinois.

3. The M&L Trucking Services, Inc. was and still is a New York Corporation organized and existing by virtue of the laws of the State of New York with offices are located in the City of Rome, the County of Oneida and the State of New York.

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1337 because the case arises from the carriage of goods in interstate commerce governed by Federal Statutes including the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706, 49 CFR part 370 and related Federal Case Law.

5. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the State of New York. Venue is proper for the Carmack Amendment claims under 49 U.S.C § 14706(d)(1) because the Defendant is a carrier and New York was a state through which the Defendant was operating. Venue is also proper under the Carmack Amendment 49 U.S.C. § 14706(d)(2) as the Defendant carrier caused the loss or damage and said loss or damage occurred in the Southern District of New York.

6. The Defendant at all times herein was conducting business in the State of New York including common carriage and/or delivery of cargo and the provision of related services, issued bills of lighting and receipts for carriage and delivery of cargo through the State of New York and/or contracted for the delivery.

7. At all times mentioned herein the Defendant was a for-hire interstate motor carrier operating within the United States and operating routes through the State of New York.

8. That on or about April 17, 2014 M&L Trucking Services, Inc. hired the Defendant to transport fiberglass truck body units from Brand FX Body Co., at 21201 510th Street,

Pocahontas, Iowa, to the consignee, North American Equipment Upfitters at 6 Sutton Circle in Hooksett, New Hampshire.

9. At all times mentioned herein the Plaintiff insured the goods being shipped under the above-referenced contract.

10. That the Defendant entered into a Bill of Lading Agreement for the transportation of said freight. A true and correct copy of said Bill of Lading is annexed hereto and labeled **Exhibit A**.

11. Under the Agreement the Defendant must indemnify, defend and save the provider and related parties against all liabilities including the expenses of legal counsel and expert witnesses which are the result of or arise out of any of the work or services performed by the carrier.

12. That the agreement permits the prevailing party to recover all expenses of litigation including attorney's fees.

13. Pursuant to the above-referenced Bill of Lading the Defendant picked up the fiberglass units and commenced moving those units in accordance with the contract.

14. Thereafter, while at the Northeast corner of Parkway and 59th Street in Bronx, New York the goods were stolen.

15. The goods have never been recovered. The goods pursuant to the sale agreement had a stated value of $103,690.00.

16. The Defendant picked up the cargo in good order and condition and in consideration of the freight charges paid, agreed to transport the cargo from Pocahontas, Iowa

to its final destination in good order and condition as when received and accepted by it in accordance with the terms of Bill of Lading.

17. The cargo was not delivered in good order and condition as when Defendant received and accepted it. The Defendant never delivered the cargo which was a total loss. The Defendant caused the loss and non-delivery by negligently and recklessly failing to properly arrange for carrying, store, secure and deliver and care for the cargo and/or by unreasonably deviating from or fundamentally breaching the agreement and contract of carriage and/or its bailment.

18. That Acadia has performed all of the conditions required under its agreement.

19. As a result of the loss, the Plaintiff did pay to M&L Trucking Services, Inc. the amount of $103,690.00 and as a result is subrogated to the claim in the instant action.

20. As a result, Plaintiff has the right to pursue all rights of recovery and is entitled to pursue subrogation rights against the parties responsible for losses paid out under the policy. Plaintiff is entitled to pursue subrogation rights against the Defendant specifically.

21. That a claim was submitted to the Defendant's insurance carrier relating to the claim. The Defendant's carrier (National Casualty Company) specifically denied the claim on or about August 7, 2014.

ACCOUNT I – CLAIM OF LOSS

22. Plaintiff repeats each allegation as previously set forth above and further alleges and shows the Court as follows.

23. Defendant agreed to transport the fiberglass truck body cargo.

24. Defendant received the cargo in good condition.

25. The Defendant failed to deliver the cargo to the final destination in the same good order and condition it was received.

26. As a result of the negligence or misconduct of the Defendant, Plaintiff has suffered damages in the sum of $103,690.00, plus the cost of investigation, attorney's fees, expenses and other damages.

27. Under 49 U.S.C. § 14706 the Defendant is liable to the Plaintiff for the full actual loss due to its failure to deliver the goods as measured by the market value of the goods at the destination because the loss was attributable to the negligence and/or misconduct of the Defendant.

WHEREFORE, the Plaintiff requests Judgment against the Defendant in the sum of $103,690.00 together with interest, the costs and disbursements of this action, reasonable attorney's fees, and such other and further relief as to the Court may seem just and proper.

Dated: August 2, 2016

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